IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2404 OF 2004

M/s. Good Value Marketing
Co. Ltd. ...Petitioner.

V/s

Federal Bank Limited & Anr. ...Respondents.

Mr. Subhash Jha i/b Law Global for the petitioner.

Mr. Anil Menon for Respondent No.1.

Mr. D.P. Adsule for the State.

CORAM: V.M.KANADE,J.
DATE: 21st March, 2005

P.C.:

1. Heard the learned Counsel for the petitioner.

2. Petitioner is challenging the issuance of process by the Metropolitan Magistrate on the complaint filed by the respondent No.1 under section 138 of the Negotiable Instruments Act.

3. The learned Counsel for the petitioner submits that there was no existing liability between the parties and, therefore, though the cheque was dishonoured by the Bank, no offence as contemplated under section 138 of the Negotiable Instruments Act has been made out. He submits that the petitioner relies on certain documents which are public documents

which clearly show that there was no existing liability so far as the petitioner is concerned.

4. The learned Counsel for the petitioner has relied upon the Judgment of the Supreme Court in the case of Madamanchi Ramappa and Anr Vs. Muthaluru Bojjappa reported in AIR 1963 SC 1633. The learned Counsel invited my attention to para 9 of the judgment wherein it has been observed by the Supreme Court that a certified copy of the public document need not be proved by calling the witness.

5. I am unable to accept the submission made by the learned Counsel appearing on behalf of the petitioner. In the present case, the question as to whether there was existing liability as contemplated under the provisions of section 138 is a question of fact which will have to be decided by the Trial Court. The complainant, firstly, has a right to challenge or dispute the public document. There is no dispute regarding the ratio laid down in the above judgment that the certified copy of the public document need not be proved. Yet, the opponent has a right to dispute such document. In this view of the matter, it is not possible to interfere with the order of issuance of process by the Magistrate. This question

will have to be decided by the Magistrate after the evidence is adduced by both the parties. This question is kept open. In the result, Writ Petition is dismissed.

V.M. KANADE, J.